**(1924) 04 CAL CK 0046**

**Calcutta High Court**

**Case No:** None

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| Varaj Lall | | APPELLANT |
| | Vs | |
| Emperor | | RESPONDENT |

**Date of Decision:** April 15, 1924

**Acts Referred:**

- Motor Vehicles Act, 1914 - Section 11

**Citation:** (1924) ILR (Cal) 948

**Hon'ble Judges:** Greaves, J; Duval, J

**Bench:** Division Bench

**Judgement**

Greaves, J.

The petitioner is the owner of motor lorry No. 630. He was prosecuted on the ground that he allowed the driver of the motor lorry to drive it at an excessive speed at 5-30 in the evening of the 23rd October last on Lower Circular Road, and thereby committed an offence under Rule 16 of Part II of the Rules regulating the use of motor vehicles in Calcutta, framed u/s 11 of Act VIII of 1914, the Indian Motor Vehicles Act, 1914.

2. The petitioner was not in the motor lorry at the time of the alleged offence, and had cautioned the driver not to exceed the regulation speed, and to drive with due care and caution.

3. The petitioner was convicted, on the 17th January last, by the Additional Presidency Magistrate, and fined Rs. 15: the driver of the motor lorry admitting that he drove at an excessive speed.

4. The Magistrate in his Explanation relies on the provisions of Rule 3 of Part II, and refers to Thornton v. The Emperor ILR (1911) Cal 415. The Rule was granted on the ground that the petitioner was not liable under the circumstances.

5. Rule 3 of Part II is, so far as material, as follows:

No person shall drive or have charge of, or cause or permit to be used, any motor vehicle or trailer which does not in all respects conform to these rules, or which is so driven or used as to contravene any of these rules.

6. Rule 16 of Part II is, so far as material, as follows:

No motor vehicle shall be driven at a greater speed than ten miles an hour, if a heavy motor car, and 8 miles an hour, if the axle-weight of any axle of the heavy motor-car exceeds six tons, or if it draws a trailer.

7. In the case of Thornton v. Emperor I.L.R(1911) Cal 415 , upon which the Magistrate relies, the conviction was in respect of an offence under Rule 20 of the Rules then in force, trained under Bengal Act III of 1903, which is almost identical with Rule 19 of the present Rules which is as follows:

No motor vehicle shall be driven recklessly or negligently, or at any speed or in any manner which is likely to endanger human life or to cause hurt or injury to any person or animal or damage to any goods carried in any vehicle or by any person, or which would be otherwise than reasonable or proper with due regard to all the circumstances of the case, including the nature, condition and use of the street or public place and the amount of traffic which is actually on it at the time or which may reasonably be expected to be on it.

8. Rule 4 of those Rules was identical with Rule 3 of the present Rules.

9. Rule 16 by itself, I think, would only make the driver liable, as it only contains a prohibition against driving at a greater speed than that stated in the rule. Rule 3, it is true, prohibits the causing or permitting a motor vehicle to be driven in contravention of Rule 16, but apart from authority I do not think that, under the circumstances of this case the petitioner can be said to have caused or permitted he motor lorry to be driven in contravention of Rule 16. He was not in the lorry at the time, and he had cautioned his driver to observe the rules.

10. The general principles of law applicable in cases of this nature are stated in volume IX of Halsbury''s "Laws of England," page 235.

The condition of mind of a servant or agent is not imputed to the master or principal so as to make him criminally liable. A master is not criminally liable merely because his servant or agent commits a negligent or malicious or fraudulent act. But in cases where a particular intent or state of mind is not of the essence of the offence, the acts or defaults of a servant or agent in the ordinary course of his employment may make the master or principal criminally liable, although he was not aware of such acts or defaults, and even where they were against his orders.

11. The principle of what I may call vicarious criminality has been applied in England in cases under the Sale of Food and Drugs Act, 1875, and in cases under the Licensing Acts: see Commissioners of Police v. Cartman [1896] 1 Q.B. 655 referred to

in Thornton v. Emperor I.L.R (1 911) Cal 415. In that case the licensee was absent when the offence was committed, but there was an express prohibition of the sale of intoxicating liquor to any drunken person, and the word "permitting" was not used in the section as regards this particular offence. Similarly, in the Sale of Food and Drugs Act, 1875, the prohibition against particular sales is absolute, and the word "permitting" does not occur. In Somerset v. Hart (1884) L.R. 12 Q.B.D. 360, a case u/s 17 of the Licensing Act, 1872 [also cited in Thornton v. Emperor I.L.R.(1911) Cal 415], there was no conviction of the licensee in whose absence gaming took place on the ground that, unless he knew and connived, he could not be said to have suffered gaming to go on. The word "suffer" appears in the section in question. In Somerset v. Wade [1894] 1 Q.B. 574 [also cited in Thornton v. Emperor I.L.R (1911) Cal 415], a case u/s 13 of the Licensing Act, 1872, there was no conviction on the ground that there could be no permission if there was no knowledge.

12. The principle I should adduce from the cases is that, where a particular intent or state of mind is not of the essence of an offence, a master can be made criminally liable for his servant''s acts, if an act is expressly prohibited but not otherwise, and that he cannot be so made liable, if the Act provides for liability for permitting and causing a certain thing, unless it can be shown that the act was done with the master''s knowledge and assent, express and implied.

13. In this view of the law I think the petitioner was not liable in the circumstances of this case, having regard to the terms of the Rule 3, and I think the conviction and sentence should be set aside and the fine be refunded.

14. It may be said that we are differing from the view expressed in Thornton v. Emperor I.L.R (1911) Cal 415, and this may be so, but having regard to the fact that that decision was given in respect of the breach of a different rule framed under a different Act, we do not think it necessary to refer the matter to a Full Bench.

Duval, J.

15. I concur.